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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. SERGIO ARMANDO MALDONADO, Defendant and Appellant.	B271891 (Los Angeles County Super. Ct. No. YA086761)

APPEAL from an order of the Superior Court of Los Angeles County, Victor L. Wright, Judge. Affirmed.

Law Office of Zulu Ali and Zulu Ali for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and Nathan Guttman, Deputy Attorney General, for Plaintiff and Respondent.

In 2013, Sergio Armando Maldonado (Maldonado), pursuant to a plea agreement, pleaded no contest to robbery (Pen. Code, § 211).[1] Two years later, Maldonado moved to withdraw his plea under section 1016.5, which permits withdrawal of a guilty plea when the court did not advise the defendant of possible adverse immigration consequences of a plea. After a hearing, the court denied the motion based on its factual finding that Maldonado had notice of the statutorily-required information before he agreed to plead no contest. Maldonado appeals. We affirm.

BACKGROUND

I. The plea

On May 14, 2013, Maldonado entered into a plea agreement—in exchange for pleading no contest to robbery, the People agreed to dismiss the charge of kidnapping for carjacking (§ 209.5, subd. (a)) and an allegation that that both crimes were committed for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22 subd. (b)(1)(C).

As part of the plea agreement, Maldonado signed and initialed a multi-page form entitled, "Plea Form, with Explanation and Waiver of Rights–Felony" (plea form). Among other things, Maldonado acknowledged the following on the plea form: "I understand that if I am not a citizen of the United States, my plea of guilty or no contest *may or, with certain offenses, will result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty* and that the appropriate consulate may be informed of my conviction. The offenses that *will result in such immigration action* include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense." (Italics added.) Maldonado also acknowledged on the plea form that "[b]efore" entering his plea, he had a "full opportunity" to discuss a number of different things with his attorney, including "[t]he consequences of this plea, including the *immigration consequences*." (Italics added.)

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

At the plea hearing, the prosecutor verbally informed Maldonado, "If you're not a citizen of the United States, your conviction in this case *will result in your deportation,* exclusion from the United States, and denial of naturalization." (Italics added.) The prosecutor also asked whether Maldonado had a chance to discuss immigration consequences with his attorney, and he replied, "yes." The prosecutor then confirmed Maldonado's understanding that the district attorney would not extend any plea offer without immigration consequences in this case. The trial court found that Maldonado had "knowingly, understandingly and intelligently waived" his constitutional rights and that he had entered into the plea "freely and voluntarily with an understanding of the nature and consequences thereof."

On June 19, 2013, the trial court denied Maldonado's oral motion to withdraw his plea and imposed the agreed-upon sentence of three years in state prison.

II. The motion to vacate

On December 7, 2015, and again on December 23, 2015, Maldonado filed substantively identical written motions to withdraw his plea and vacate the judgment pursuant to section 1016.5. Maldonado argued that he "was not given proper warnings by the court about the immigration consequences if he pled nolo contendere" to the robbery charge. Specifically, he contended that he "should have been warned that a conviction under said code section would likely result in removal proceedings . . . ." He argued that the section 1016.5 advisement he received "was not sufficient advisement of the special consequences that may result from the plea," namely the denial of "special forms of relief from removal, including Cancellation of Removal and Asylum . . . ."

In support of his motion, Maldonado submitted a declaration in which he stated that he is not a United States citizen and that he had been ordered removed from the country and deemed ineligible for "cancellation of removal, or voluntary dismissal" as a result of his plea. Maldonado further stated that he believed that "the Court did not properly advise me that I was subject to detention or possible denial of relief, voluntary departure, bar from reentry, and/or any other consequences" of the plea. He further claimed, "If prior counsel or the Court had advised me of the immigration consequences

triggered by my plea, I would not have pled nolo contendere. I would have retained an attorney and taken my case to trial or negotiated another plea." Maldonado, however, did not offer any independent, objective evidence to support his assertions about what he would have done differently and/or whether a different plea agreement was possible.

On January 6, 2016, the trial court held a hearing on Maldonado's motion to vacate. After reviewing the case file, the trial court confirmed that Maldonado "did fill out a written waiver, advisory rights waiver and plea form. Indicated that he had been advised of and acknowledged certain rights and the consequences of—immigration consequences of his plea." In addition, the court reviewed the transcript of the plea hearing, finding that Maldonado "was advised on the record of the consequences of his plea; that would include deportation, exclusion and denial of naturalization." With regard to Maldonado's assertion that he would not have taken the plea had he been properly advised of the consequences, the trial court found the assertion "speculative because he would have been looking at a substantial amount of time in state prison," if he was found guilty of both charges and the gang enhancement. Given the length of time that had passed since sentencing, the trial court also found that it would be "prejudicial to the People" to reopen the case due, among other things, to the unavailability of witnesses.

Maldonado timely appealed.

DISCUSSION

I. Section 1016.5 and the standard of review

Section 1016.5, subdivision (a) requires that, before accepting a guilty plea, the trial court "shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged *may* have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." (Italics added.)

Section 1016.5, subdivision (b) allows a defendant to move to withdraw his plea and vacate the judgment if "the court fails to advise the defendant as required *by this section* and the defendant shows that conviction of the offense to which defendant

pleaded guilty or nolo contendere may have [the specified adverse immigration] consequences." (Italics added.)

"To prevail on a motion to vacate under section 1016.5, a defendant must establish that (1) he or she was not properly advised of the immigration consequences *as provided by the statute*; (2) there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and (3) he or she was prejudiced by the nonadvisement." (*People v. Totari* (2002) 28 Cal.4th 876, 884, italics added; see *People v. Arendtsz* (2016) 247 Cal.App.4th 613, 617 (*Arendtsz*).)

The defendant bears the burden of demonstrating prejudice. (*People v. Arriaga* (2014) 58 Cal.4th 950, 963; *People v. Martinez* (2013) 57 Cal.4th 555, 562, 565.) The accused must prove it was reasonably probable he or she would not have entered a guilty, no contest or nolo contendere if properly advised. (*Martinez*, at pp. 562, 565; accord, *People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 210.) Our Supreme Court has explained: "To that end, the defendant must provide a declaration or testimony stating that he or she would not have entered into the plea bargain if properly advised. It is up to the trial court to determine whether the defendant's assertion is credible, and the court may reject an assertion that is not supported by an explanation or other corroborating circumstances." (*Martinez*, at p. 565; see *In re Resendiz* (2001) 25 Cal.4th 230, 253–254 [defendant's self-serving statement not sufficient to show prejudice]; *In re Alvernaz* (1992) 2 Cal.4th 924, 938 [statement of prejudice "must be corroborated independently by objective evidence"].)

We review the trial court's denial of defendant's motion to vacate the judgment for an abuse of discretion. (*Arendtsz*, *supra*, 247 Cal.App.4th at p. 617; see *Zamudio*, *supra*, 23 Cal.4th at p. 192.) Under the abuse of discretion standard, we give "abundant deference to the trial court's rulings." (*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018.) A trial court's exercise of discretion will not be disturbed on appeal unless the court "exercised it in an arbitrary, capricious, or patently absurd manner resulting in a manifest miscarriage of justice." (*Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th

1427, 1434.) "It is often said that a trial court's exercise of discretion will be reversed only if its decision is 'beyond the bounds of reason.'" (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393.)

II. The trial court did not abuse its discretion in denying the motion

Maldonado argues that he "was not advised that his plea would result in mandatory deportation." This contention lacks merit. The record reflects that Maldonado was properly advised in accordance with section 1016.5 that his plea could have specified immigration consequences, including deportation. In fact, Maldonado was expressly advised at his plea hearing that if he was not a citizen, his conviction "will result in [his] deportation, exclusion from the United States, and denial of naturalization." Moreover, Maldonado acknowledged his understanding of these consequences, both verbally at the hearing and in writing on the plea form. Even if there had been no oral advisement during the plea hearing, under the law Maldonado nonetheless received adequate advisement of the immigration consequences through the plea form and his written acknowledgment that he understood those consequences. "[A] validly executed waiver form is a proper substitute for verbal admonishment by the trial court." (*People v. Ramirez* (1999) 71 Cal.App.4th 519, 521; see *People v. Araujo* (2016) 243 Cal.App.4th 759, 762 [verbal advisement under section 1016.5 not required].)

Maldonado also contends that the "generic recital" pursuant to section 1016.5, subdivision (a) is "unfair, not proper, and does not reflect the legislative intent of the statute," and, as a result, the trial court "must adopt a more engaged role when advising a noncitizen of the potentially harsh immigration consequences that would result from his or her plea." (Boldface & underscore omitted.) Maldonado asserts that the court was required to advise him of certain unidentified "special consequences."

In making this argument, Maldonado relies on the United States Supreme Court's decision in *Padilla v. Kentucky* (2010) 559 U.S. 356, 372–374 (*Padilla*). Maldonado's reliance is misplaced. In *Padilla*, the court held a defense attorney provides constitutionally deficient assistance when a noncitizen client is not advised about the risk of deportation resulting from a guilty plea. (*Id*. at pp. 373–374.) The *Padilla* defendant

argued his counsel was ineffective because the counsel failed to admonish him of the automatic immigration consequences of the plea. (*Id*. at pp. 359–360.) *Padilla* held that constitutionally competent counsel would have advised the defendant that his marijuana transportation conviction made him subject to automatic deportation, and remanded the matter to determine whether the defendant was prejudiced by his counsel's ineffective assistance. (*Id*. at pp. 359–360, 374–375.)

The holding in *Padilla*, *supra*, 559 U.S. 356, does not support the assertion that the trial court erred in denying Maldonado's statutory motion. *Padilla*'s holding is inapplicable in the section 1016.5 context. Section 1016.5 does not require notification of mandatory deportation consequences. "Section 1016.5 addresses *only* the duty of the court to admonish a defendant of the *possibility* that a conviction may result in removal from the United States, or preclude naturalization [citation], and does not address the obligation to explain the more particular [immigration] consequences [of a plea]." (*People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1145, italics added.) Section 1016.5 requires only that the court identify three potential immigration consequences of a conviction: that a conviction "*may* have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization." (§ 1015, subd. (a), italics added; see *Arendtsz*, *supra*, 247 Cal.App.4th at pp. 618–619.) This is a different (and narrower) duty than the scope of an attorney's obligations to provide effective assistance. In other words, *Padilla*'s ineffective assistance holding "has no material bearing" on a trial court's section 1016.5 obligations. (*Arendtsz*, *supra*, 247 Cal.App.4th at p. 619.)

Similarly, we disagree with Maldonado that the "legislative intent" behind section 1016.5 compels a broader advisement than what the statute expressly requires. Section 1016.5 includes a statement that "it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea." (§ 1016.5, subd. (d), italics added.) But these fairness concerns "do not override the express language of section 1016.5, subdivision (a)." (*Arendtsz*, *supra*, 247 Cal.App.4th at

p. 618; *People v. Kim* (2009) 45 Cal.4th 1078, 1107, fn. 11 [§ 1016.5 does not extend beyond its terms]; *People v. Mbaabu*, *supra*, 213 Cal.App.4th at p. 1145 [§ 1016.5 does not require advisement of other consequences specified in *Padilla*].)

In sum, there is nothing in *Padilla* or under California law, including the Legislature's fairness concerns, that compels a trial court to adopt a more "engaged role" when advising a noncitizen of the potentially harsh immigration consequences that would result from his or her plea, and nothing in section 1016.5 that "requires more than an advisement of the three major consequences of a plea that are specified in subdivision (a)." (*Arendtsz*, *supra*, 247 Cal.App.4th at pp. 618–619.)

As there was clear evidence at the plea hearing and in the plea form that Maldonado entered into his plea agreement with an informed understanding of its immigration consequences, and because Maldonado only offered his unsupported, self-serving declaration in support of the motion to vacate, we conclude that the trial court acted in a reasoned and reasonable manner in denying the motion.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.